



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, CNR, OLC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The application brought by the tenant is a request to have a 10 day Notice to End Tenancy cancelled.

The application brought by the landlord is a request for an Order of Possession based on the 10 day Notice to End Tenancy.

Background and Evidence

Counsel for the landlord stated that:

- When the landlord went to the bank to cash the rent cheque, which was given for May 1, 2009 there were insufficient funds in the bank and the landlord was unable to cash the cheque.
- The tenant was therefore served with a 10 day Notice to End Tenancy, for non-payment of rent, on May 4, 2009.
- Having been advised by the tenant that there was money in the account the landlord attempted to cash the Cheque again on May 14, 2009 and May 19, 2009 and again there were insufficient funds in the account.
- The May 2009 rent was not paid until June 1, 2009.

The landlord is therefore requesting an Order of Possession be issued based on the Notice to End Tenancy and since the landlord has accepted money, for use and occupancy only, of the rental unit for the month of June 2009 he is requesting that that the order be issued for June 30, 2009.

The tenant testified that:

- When he issued the cheque to the landlord he had not yet deposited his paycheque and therefore when the landlord attempted to cash the cheque the funds were not yet in the account.
- He had deposited his paycheque later in the day on May 1, 2009 and advised the landlord to attempt to cash the cheque again but the landlord had refused to do so.
- He subsequently received a 10 day Notice to End Tenancy and again advised the landlord to cash the cheque.
- The landlord again did not cash the cheque at that time and by the time the landlord did try to cash the cheque on May 19 there were no longer sufficient funds in the account to cover the cheque



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The tenant is therefore requesting that the Notice to End Tenancy cancelled, because had the landlord cashed the cheque when he was advised to by the tenant there would have been sufficient funds in the account.

Analysis

It is my finding that the tenant has not met the burden of proving that there was ever sufficient funds in the account to cover the rent cheque that was given for May 1, 2009 rent.

The landlord has supplied substantial evidence to show that each time an attempt was made to cash the cheque there were insufficient funds in the account.

Therefore since the tenant has admitted to receiving a 10 day notice for non-payment of rent, the landlord does have the right to an Order of Possession.

Conclusion

The tenant's application is dismissed without leave to reapply and I've issued an Order of Possession to the landlord at 12:00 noon on June 30, 2009. I further ordered that the tenant bear the \$ 50.00 cost of the filing fee paid by the landlord for his application for dispute resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 16, 2009.

Dispute Resolution Officer